

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA
***ex rel.* DON ASCOLESE,**

Plaintiff,

v.

SHOEMAKER CONSTRUCTION CO., *et al.*,

Defendants.

:
:
:
: **CIVIL ACTION**
:
: **No. 18-1864**
:
:
:
:
:
:

ORDER

AND NOW, this 19th day of April, 2021, upon consideration of Defendants Shoemaker Construction Co. (“Shoemaker”) and Shoemaker Synterra, a JV’s (“SSAJV”) “Motion to Dismiss for Failure to State a Claim” (ECF No. 31), Defendant McDonough Bolyard Peck’s (“MBP”) “Motion to Dismiss for Failure to State a Claim” (ECF No. 32), Plaintiff-Relator Don Ascolese’s (“Relator”) response in opposition thereto (ECF No. 33), Defendants Shoemaker and SSAJV’s Reply (ECF No. 38), Defendant MBP’s Reply (ECF No. 39), and following oral argument on March 31, 2021, it is hereby **ORDERED** that:

- Defendant MBP’s motion (ECF No. 32) is **GRANTED**. Counts I, II, and III against MBP are **DISMISSED without prejudice**. **Within 14 days of the date of this Order**, Relator may seek leave to file a Second Amended Complaint regarding these claims if, in good faith, he is able to cure the deficiencies set forth in my accompanying Memorandum Opinion.
- Defendants Shoemaker and SSAJV’s motion (ECF No. 31) is **GRANTED IN PART** and **DENIED IN PART**.

- The motion (ECF No. 31) is **DENIED** as to Counts I and II against Shoemaker and SSAJV to the extent they are based on Relator's first and second false certification theories, as discussed in my accompanying Memorandum Opinion.
- The motion (ECF No. 31) is **GRANTED** as to Counts I and II against Shoemaker and SSAJV to the extent they are based on Relator's third false certification theory, as discussed in my accompanying Memorandum Opinion. This claim is **DISMISSED without prejudice. Within 14 days of the date of this Order,** Relator may seek leave to file a Second Amended Complaint regarding this claim if, in good faith, he is able to cure the deficiencies set forth in my accompanying Memorandum Opinion.
- The motion (ECF No. 31) is **GRANTED** as to Count III. Count III against Shoemaker and SSAJV is **DISMISSED with prejudice.**

BY THE COURT:

/s/ Mitchell S. Goldberg
MITCHELL S. GOLDBERG, J.